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NO. 59722-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL E. PETERSON,

Appellant.

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STATE OF WASHINGTON
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BRIEF OF RESPONDENT

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I. ISSUES

(1) By statute, a sex offender who ceases to reside at his registered address must notify the county sheriff. Depending on the circumstances, the time allowed for notification can vary from 48 hours to 10 days. Here, the evidence showed that the defendant did not notify the sheriff for over a month after ceasing to reside at his registered address. Was this evidence sufficient to support a conviction for failure to register?

(2) Was the information inadequate, where it failed to allege that the defendant acted "knowingly," which is an essential element of the crime of failing to register?

II. STATEMENT OF THE CASE

The defendant, Michael Peterson, was convicted in 1988 of third degree rape. 1 RP 41-42. He was released from prison in November, 1991. 1 RP 55. Over the ensuing years, he registered numerous times, either as having an address or as being homeless. 1 RP 72-74.

On September 12, 2005, the defendant registered as residing at a particular apartment in Everett. 1 RP 45. He subsequently fell behind on his rent. Sometime around November 2, he moved out of this apartment. 1 RP 20-22. That day, an

Everett Police officer conducted a routine check and discovered that the defendant no longer lived there. 1 RP 32-33.

On December 6, the defendant came into the Snohomish County Sheriff's Office. He completed a registration indicating that he was homeless. 1 RP 63-65.

The defendant was charged with failing to register as a sex offender. 1 CP 41-42. Following a jury trial, he was found guilty. 1 CP 21. The court sentenced him to 15 days' confinement. 1 CP 10.

III. ARGUMENT

A. THE EVIDENCE WAS SUFFICIENT TO PROVE THE DEFENDANT'S GUILT, BY SHOWING THAT HE MOVED WITHOUT NOTIFYING THE SHERIFF WITHIN THE TIME ALLOWED BY STATUTE.

1. A Person Who Moves From His Registered Residence Must Notify The Sheriff Within A Maximum Of 10 Days, Regardless Of Where He Moved To.

The sex offender registration statute contains several provisions dealing with a person who registers as residing at a particular address and thereafter ceases to reside there. All of these, however, require prompt notification to the Sheriff of the county where the person had formerly resided.

The crime of failing to register was defined by RCW 9A.44.130(10) [now codified as RCW 9A.44.130(11)]¹:

A person who knowingly fails to register with the county sheriff or notify the county sheriff ... as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense. . .

The present case involves an offender who registered as residing at a fixed address, but who then ceased to reside at that address. The duties of such an offender were specified in two subsections of the statute. Subsection (5)(a) governed offenders who moved to a new address:

If any person required to register pursuant to this section changes his or her residence address within the same county, **the person must send written notice of the change of address to the county sheriff within seventy-hours of moving.** If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. **The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.** The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county

¹ The version of the statute relevant to the present case was enacted by Laws of 2003, ch. 215, § 1. With respect to the provisions cited in this brief, the current statute is substantially identical.

sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

If the offender ceases to have any residence, his duties were defined by subsection (6)(a):

Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence.

Under this provision, any person subject to registration who ceases to reside at his registered address has an identical duty: to provide written notice to the sheriff of the county in which he last registered. This is true whether the person moved to a new residence within the county, moved to a new residence outside the county (whether within or outside of the State), or ceased to have a fixed residence.

The existence or location of the person's new residence only affects the time allowed for compliance. If the person ceases to have a fixed residence, he must provide notification within 48 hours, excluding weekends and holidays. If he moves to a new residence within the county, he must provide notification within 72

hours, with no exclusions. If he moves to a different county, he must provide notification within 10 days.

In the present case, the evidence showed that the defendant moved from his registered address on November 2, 2005. RP 20. He did not notify the sheriff until December 6, when he registered as homeless. RP 63. Even under the most generous assumption – that he resided in a different county for part of the intervening period – the defendant failed to notify the sheriff within the 10 days that is the maximum allowable period for notification. Regardless of where the defendant went after he moved, he failed to comply with the notification statute.

The defendant argues that the differing registration requirements constitute “alternative means” of committing the crime. “Alternative means” analysis only applies when a statute lists alternative means of committing a crime. It does not apply when a single statutory means can have multiple possible definitions. State v. Linehan, 147 Wn.2d 638, 646-48, 56 P.3d 542 (2002). RCW 9A.44.130 contained only two punitive provisions: subsection (10) penalizes failure to register as a sex offender; subsection (11) penalizes failure to register as a kidnapping offender. (Under the current statute, these are subsections (11)

and (12) respectively.) The remaining provisions define the registration duties that are enforced by these subdivisions. The definitional provisions do not constitute "alternative means" that must be individually proved.

2. The Purposes Of The Sex Offender Registration Statute Would Be Impeded If A Registrant Could Escape Prosecution By Successfully Concealing His Residence.

This conclusion is reinforced by consideration of the purposes of the sex offender registration statute. "In interpreting a statute, the primary objective of the court is to ascertain and carry out the intent and purpose of the Legislature in creating it." Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 239, 59 P.3d 655 (2002). The purpose of the sex offender registration statute is to provide law enforcement agencies with the information needed to protect communities against sex offenders. State v. Heiskell, 129 Wn.2d 113, 117, 916 P.2d 366 (1996); Laws of 1990, ch. 3, § 401. The defendant's interpretation of the statute is contrary to this purpose. Under his interpretation, a sex offender could move from his residence to some undisclosed location. To prosecute him, the State would have either prove where his residence was, or prove the negative that he lacked a residence. As long as the defendant

successfully frustrates the purpose of the statute, he cannot be prosecuted.

This court should not adopt such an absurd interpretation. Rather, the statute should be construed in accordance with its language. A person who moves from his registered residence must notify the sheriff of that county. Depending on the circumstances, he may have as much as 10 days to do so. If he registers within this time, and the State seeks to prosecute him for not registering earlier, the State must prove circumstances that give rise to an earlier duty – that is, it must prove that he either moved to a new residence within the county or ceased to have a fixed residence. If, however, the person does not register within the maximum allowable period of 10 days, these facts become immaterial. The State need only prove that the defendant (1) was required to register, (2) registered as having a fixed residence, (3) ceased to reside at that residence, and (4) knowingly failed to notify the county sheriff within 10 days. Since the evidence in the present case established these facts, it was sufficient to support a conviction.

3. Alternatively, The Evidence Was Sufficient To Support A Finding That The Defendant Became Homeless And Failed To

Notify The Sheriff Within The Time Allowed For A Homeless Person.

Alternatively, even if the State was required to prove where the defendant resided after he moved out, the evidence was sufficient to satisfy that burden. The defendant's landlord testified that the defendant moved out because he didn't have the money to pay his rent. RP 22. Approximately a month later, the defendant notified the sheriff that he was homeless. RP 63. A jury could reasonably infer that because the defendant lacked the money to pay rent, he was homeless between these dates – that is, he became homeless after November 2. The evidence showed that he did not notify the Sheriff within 48 hours after this event. (Since November 2, 2005, was a Wednesday, the exclusion for weekends and holidays is irrelevant.)

In determining the sufficiency of evidence, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Here, a jury could reasonably infer that the defendant became homeless at the time that he left his last known residence or shortly thereafter.

Consequently, even if the State was required to prove where he resided, the evidence was sufficient to satisfy this evidence.

B. THE STATE CONCEDES THAT THE INFORMATION FAILED TO CHARGE ALL ELEMENTS OF THE CRIME.

Notwithstanding the above, the State concedes that the information was insufficient to charge the offense. As the defendant correctly points out, it failed to allege that the crime was committed “knowingly.” It also set out the wrong time period for registration, since it only alleged that the defendant failed to register within 72 hours after ceasing to reside at his last registered residence. 1 CP 41-42. Under the allegations in the information, the defendant could theoretically have moved to a new county and notified the sheriff more than 72 hours but less than 10 days after moving. Under such circumstances, the defendant would not be guilty of a crime.

An information is constitutionally insufficient if it fails to include all essential elements of the crime. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). When the challenge is raised for the first time on appeal, the court will determine whether the necessary facts can, be a fair construction, be found within the terms of the charge. Id. at 104. The proper remedy for an

inadequate information is dismissal of the charge without prejudice. State v. Simon, 120 Wn.2d 196, 199, 840 P.2d 172 (1992). That remedy should be applied in the present case.

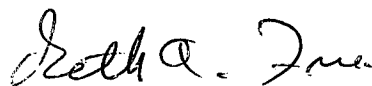
The defendant also challenges the jury instructions. In view of the concession above, this challenge is moot. If the charge is re-filed, the appropriate jury instructions will depend on the allegations in the information and the evidence introduced at re-trial.

IV. CONCLUSION

The conviction should be reversed and the charge dismissed without prejudice.

Respectfully submitted on December 31, 2007.

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